**South Carolina General Assembly**

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**H. 4343**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Sellers and McCoy

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Summary: Criminal Domestic Violence

**HISTORY OF LEGISLATIVE ACTIONS**

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12/3/2013 House Referred to Committee on **Judiciary**

1/14/2014 House Introduced and read first time ([House Journal‑page 39](file:///H:\HJ%20Archive\2014\01-14-14.docx))

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**VERSIONS OF THIS BILL**

[12/3/2013](file:///p:\pprever\2013-14\4343_20131203.docx)

**A** **BILL**

TO AMEND SECTION 16‑25‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CRIMINAL DOMESTIC VIOLENCE OFFENSES AND PENALTIES, SO AS TO INCREASE THE PENALTY FOR FIRST OFFENSE CRIMINAL DOMESTIC VIOLENCE FROM THIRTY DAYS TO ONE HUNDRED EIGHTY DAYS, CLARIFY THAT THE AMOUNT OF BOND IS IN THE DISCRETION OF THE JUDGE, PROVIDE THAT THE COURT MUST ORDER PARTICIPATION IN A DOMESTIC VIOLENCE INTERVENTION PROGRAM, AND ALLOW RESTRICTION ON FIREARMS AND AMMUNITION AS A CONDITION OF BOND; TO AMEND SECTION 16‑25‑30, RELATING TO THE ILLEGAL POSSESSION OF A FIREARM BY A PERSON CONVICTED OF A DOMESTIC VIOLENCE OFFENSE, SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON CONVICTED OF A CRIMINAL DOMESTIC VIOLENCE OFFENSE OR A PERSON SUBJECT TO AN ORDER OF PROTECTION FOR DOMESTIC OR FAMILY VIOLENCE TO SHIP, TRANSPORT, OR RECEIVE A FIREARM OR AMMUNITION, TO PROVIDE FOR THE SURRENDER OF FIREARMS TO THE APPROPRIATE COUNTY SHERIFF, AND TO PROVIDE NOTICE TO A PERSON TO WHOM THE STATUTE APPLIES; TO AMEND SECTION 16‑25‑65, AS AMENDED, RELATING TO CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, SO AS TO PROVIDE THAT THE COURT MUST ORDER PARTICIPATION IN A DOMESTIC VIOLENCE INTERVENTION PROGRAM AND ALLOW A RESTRICTION ON FIREARMS AND AMMUNITION AS A CONDITION OF BOND; TO AMEND SECTION 22‑5‑910, AS AMENDED, RELATING TO EXPUNGEMENT OF CRIMINAL RECORDS, SO AS TO INCREASE THE AMOUNT OF TIME WHEN A FIRST OFFENSE CRIMINAL DOMESTIC VIOLENCE OFFENSE MAY BE EXPUNGED FROM FIVE TO SEVEN YEARS FROM THE DATE OF THE CONVICTION; AND TO AMEND SECTION 22‑5‑920, AS AMENDED, RELATING TO YOUTHFUL OFFENDER CONVICTIONS, SO AS TO CORRECT AN OBSOLETE REFERENCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑25‑20 of the 1976 Code, as last amended by Act 255 of 2008, is further amended to read:

“Section 16‑25‑20. (A) It is unlawful to:

(1) cause physical harm or injury to a person’s own household member; or

(2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

(B) Except as otherwise provided in this section, a person who violates the provisions of subsection (A) is guilty of the offense of criminal domestic violence and, upon conviction, must be punished as follows:

(1) for a first offense, the person is guilty of a misdemeanor and must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ~~thirty~~ one hundred eighty days. In addition, the court ~~may suspend the imposition or execution of all or part of the fine conditioned upon the offender completing, to the satisfaction of the court, and~~, in accordance with the provisions of ~~Section 16-25-20~~ subsection (H), shall order an offender convicted of a violation of this item to participate in a domestic violence intervention program designed to treat batterers. The court may suspend the imposition or execution of all or part of the fine conditioned upon the offender completing, to the satisfaction of the court, the domestic violence intervention program. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, an offense pursuant to the provisions of this subsection must be tried in summary court. Notwithstanding another provision of law, the granting of bond for a violation of the provisions of this item as well as the proper amount of bond to be set is solely in the discretion of the judge;

(2) for a second offense, the person is guilty of a misdemeanor and must be fined not less than two thousand five hundred dollars nor more than five thousand dollars and imprisoned not less than a mandatory minimum of thirty days nor more than one year. In addition, the court ~~may suspend the imposition or execution of all or part of the sentence, except the thirty‑day mandatory minimum sentence, conditioned upon the offender completing, to the satisfaction of the court, and~~, in accordance with the provisions of ~~Section 16-25-20~~ subsection (H), shall order an offender convicted of a violation of this item to participate in a domestic violence intervention program designed to treat batterers. The court may suspend the imposition or execution of all or part of the fine conditioned upon the offender completing, to the satisfaction of the court, the domestic violence intervention program. If a person is sentenced to a mandatory minimum of thirty days pursuant to the provisions of this subsection, the judge may provide that the sentence be served two days during the week or on weekends until the sentence is completed and is eligible for early release based on credits he is able to earn during the service of his sentence, including, but not limited to, good‑time credits;

(3) for a third or subsequent offense, the person is guilty of a felony and must be imprisoned not less than a mandatory minimum of one year but not more than five years. In addition, the court, in accordance with the provisions of subsection (H), shall order an offender convicted of a violation of this item to participate in a domestic violence intervention program designed to treat batterers.

(C) For the purposes of subsections (A) and (B), a conviction within the previous ten years for a violation of subsection (A), Section 16‑25‑65, or a criminal domestic violence offense in another state which includes similar elements to the provisions of subsection (A) or Section 16‑25‑65, constitutes a prior offense. A conviction for a violation of a criminal domestic violence offense in another state does not constitute a prior offense if the offense is committed against a person other than a ‘household member’ as defined in Section 16‑25‑10.

(D) A person who violates the terms and conditions of an order of protection issued in this State under Chapter 4, Title 20, the ‘Protection from Domestic Abuse Act’, or a valid protection order related to domestic or family violence issued by a court of another state, tribe, or territory is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days and fined not more than five hundred dollars. In addition, the court, in accordance with the provisions of subsection (H), shall order an offender convicted of a violation of this item to participate in a domestic violence intervention program designed to treat batterers.

(E) Unless the complaint is voluntarily dismissed or the charge is dropped prior to the scheduled trial date, a person charged with a violation provided in this chapter must appear before a judge for disposition of the case.

(F) When a person is convicted of a violation of Section 16‑25‑65 or sentenced pursuant to subsection (C), the court may suspend execution of all or part of the sentence, except for the mandatory minimum sentence, and place the offender on probation, conditioned upon:

(1) the ~~offender completing~~ offender’s mandatory completion, to the satisfaction of the court, of a domestic violence intervention program designed to treat batterers;

(2) fulfillment of all the obligations arising under court order pursuant to this section and Section 16‑25‑65; and

(3) other reasonable terms and conditions of probation as the court may determine necessary to ensure the protection of the victim.

(G) In determining whether or not to suspend the imposition or execution of all or part of a sentence as provided in this section, the court must consider the nature and severity of the offense, the number of times the offender has repeated the offense, and the best interests and safety of the victim.

(H) An offender who participates in a ~~batterer treatment~~ domestic violence intervention program pursuant to this section, must participate in a program offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The offender must pay a reasonable fee for participation in the treatment program but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61‑12‑20. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay.

(I) Notwithstanding another provision of law, a condition of bond for a violation of the provisions of subsection (A) may provide that an offender who violates the provisions of subsection (A) may not ship, transport, possess, or receive a firearm or ammunition while the offender is under bond.”

SECTION 2. Section 16‑25‑30 of the 1976 Code, as added by Act 59 of 2009, is amended to read:

“Section 16‑25‑30. (A) It is unlawful for a person who has been convicted of a violation of Section 16‑25‑20 or 16‑25‑65 or who is subject to an order of protection to ship, transport, possess, or receive a firearm or ammunition pursuant to Chapter 4, Title 20, or a valid order related to domestic or family violence issued by a court of another state, tribe, or territory.

(B) Upon conviction for an offense pursuant to Section 16‑25‑20 or 16‑25‑65 or upon the issuance of an order of protection pursuant to charges of a violation of Section 16‑25‑20 or 16‑25‑65, a person must complete a form listing the make, model, and serial number of all firearms he owns. Such firearms must be surrendered within forty‑eight hours to the sheriff of the appropriate county with jurisdiction over the domestic violence offense. Failure to surrender firearms in accordance with the requirements of this subsection is a misdemeanor punishable by not more than one year in prison.

(C) At the time a person is convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, or upon the issuance of an order of protection, the court must deliver to the person a written form that conspicuously bears the following language: ‘Pursuant to the provisions of this section and 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16‑25‑20 or 16‑25‑65, or a person who is subject to an order of protection as described in subsection (A), to ship, transport, possess, or receive a firearm or ammunition.’”

SECTION 3. Section 16‑25‑65 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

“Section 16‑25‑65. (A) A person who violates Section 16‑25‑20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:

(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or

(2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

(B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not less than a mandatory minimum of one year nor more than ten years. In addition, the court ~~may suspend the imposition or execution of all or part of the sentence, except the one‑year mandatory minimum sentence, and place the offender on probation conditioned upon the offender completing, to the satisfaction of the court~~, in accordance with the provisions of this subsection (H), shall order an offender convicted of a violation of this section to participate in a domestic violence intervention program designed to treat batterers offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The offender must pay a reasonable fee for participation in the treatment program, but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61‑12‑20. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay.

(C) The provisions of subsection (A) create a statutory offense of criminal domestic violence of a high and aggravated nature and must not be construed to codify the common law crime of assault and battery of a high and aggravated nature.

(D) Notwithstanding another provision of law, a condition of bond for a violation of this section may provide that an offender who violates this section may not ship, transport, possess, or receive a firearm or ammunition while the offender is under bond.”

SECTION 4. Section 22‑5‑910 of the 1976 Code, as last amended by Act 75 of 2013, is further amended to read:

“Section 22‑5‑910. (A) Following a first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of one thousand dollars, or both, the defendant after three years from the date of the conviction, including a conviction in magistrates or general sessions court, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to:

(1) an offense involving the operation of a motor vehicle;

(2) a violation of Title 50 or the regulations promulgated pursuant to Title 50 for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses are authorized; or

(3) an offense contained in Chapter 25, Title 16, except first offense criminal domestic violence as contained in Section 16‑25‑20, which may be expunged ~~five~~ seven years from the date of the conviction.

(B) If the defendant has had no other conviction during the three‑year period, or during the ~~five‑year~~ seven‑year period as provided in subsection (A)(3), following the first offense conviction for a crime carrying a penalty of not more than thirty days imprisonment or a fine of not more than one thousand dollars, or both, including a conviction in magistrates or general sessions court, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred prior to June 1, 1992.

(C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of the expungement to ensure that no person takes advantage of the rights of this section more than once. This nonpublic record is not subject to release pursuant to Section 34‑11‑95, the Freedom of Information Act, or any other provision of law except to those authorized law or court officials who need to know this information in order to prevent the rights afforded by this section from being taken advantage of more than once.

(D) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.”

SECTION 5. Section 22‑5‑920 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 22‑5‑920. (A) As used in this section, ‘conviction’ includes a guilty plea, a plea of nolo contendere, or the forfeiting of bail.

(B) Following a first offense conviction as a youthful offender for which a defendant is sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the defendant, after five years from the date of completion of his sentence, including probation and parole, may apply, or cause someone acting on his behalf to apply, to the circuit court for an order expunging the records of the arrest and conviction. However, this section does not apply to an offense involving the operation of a motor vehicle, to a violation of Title 50 or the regulations promulgated under it for which points are assessed, suspension provided for, or enhanced penalties for subsequent offenses authorized, to an offense classified as a violent crime in Section 16‑1‑60, or to an offense contained in Chapter 25, Title 16, except as otherwise provided in Section ~~16‑25‑30~~ 22‑5‑910. If the defendant has had no other conviction during the five‑year period following completion of his sentence, including probation and parole, for a first offense conviction as a youthful offender for which the defendant was sentenced pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, the circuit court may issue an order expunging the records. No person may have his records expunged under this section more than once. A person may have his record expunged even though the conviction occurred before the effective date of this section. A person eligible for a sentence pursuant to the provisions of Chapter 19, Title 24, Youthful Offender Act, and who is not sentenced pursuant to those provisions, is not eligible to have his record expunged pursuant to the provisions of this section.

(C) After the expungement, the South Carolina Law Enforcement Division is required to keep a nonpublic record of the offense and the date of its expungement to ensure that no person takes advantage of the rights permitted by this section more than once. This nonpublic record is not subject to release under Section 34‑11‑95, the Freedom of Information Act, or another provision of law, except to those authorized law enforcement or court officials who need this information in order to prevent the rights afforded by this section from being taken advantage of more than once.”

SECTION 6. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 8. This act takes effect upon approval by the Governor.

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